HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5605 PCB GOAS 11-08 Department of Financial Services
SPONSOR(S): Government Operations Appropriations Subcommittee, Hooper
TIED BILLS: **IDEN./SIM. BILLS:** SB 1068

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	15 Y, 0 N	Fox	Topp
1) Appropriations Committee	22 Y, 0 N	Fox	Leznoff

SUMMARY ANALYSIS

The Department of Financial Services (DFS) manages and oversees several major functions of state government, including the Treasury, State Fire Marshall, Insurance Fraud, State Accounting and Auditing, Workers' Compensation, Risk Management and Funeral, Cemetery and Consumer Services. This bill amends the statutes related to Risk Management and Workers' Compensation to achieve efficiencies and cost savings measures linked to the proposed House of Representatives' General Appropriations Act for Fiscal Year 2011-2012. The bill also revises language related to consumer services. Specifically, the bill includes the following provisions:

Amends s. 20.121, F.S., to codify the transfer of responsibilities related to consumer complaints from the Department of Financial Services to the Office of Financial Regulation.

Amends s. 284.50, F.S., by requiring the Department of Financial Services and all state agencies and state universities with more than 3,500 employees who are provided insurance coverage from the Division of Risk Management (Division) to establish and maintain a return-to-work program for injured state workers. Presently, each agency and state university with more than 3,500 employees, with the exception of Florida International University (FIU), has some form of a return-to-work program. However, DFS indicates that FIU will begin implementation of a return-to-work program in April, 2011.

The Fiscal Year 2010-2011 General Appropriations Act included a nonrecurring appropriation of $17.1 million (section 112) to address the deficit in the Risk Management Trust Fund for Fiscal Year 2009-2010. In addition, the Fiscal Year 2010-2011 General Appropriations Act included a recurring $39.1 million appropriation (Specific Appropriation 2180) to cover the Fiscal Year 2010-2011 estimated short-fall. The deficits for the previous and the current fiscal years are primarily attributable to the rising costs of workers' compensation. This bill implements a statewide return-to-work program with the goal of reducing the state's workers' compensation expenditures. The DFS has estimated the savings from the implementation of a return-to-work program to be approximately $1.0 million annually to the Risk Management Trust Fund.
The bill amends s. 440.50, F.S., to require that funds that are transferred from the Workers' Compensation Administration Trust Fund (WCATF) to other agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert back to the Workers' Compensation Administration Trust Fund. This change in statute is necessary to insure that sufficient cash balance will be available in the WCATF to fund the various appropriations made by the Legislature in support of the administration of the workers' compensation provisions in law and to avoid increases in the assessment on workers' compensation premiums as provided for in s. 440.51(1), F.S.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Office of Financial Regulation/Consumer Services: Presently, the Department of Financial Services provides for consumer assistance and complaint processing for functions and programs regulated by the department as well as providing the same functions for the Office of Insurance Regulation. The Office of Financial Regulation currently handles all functions related to consumer assistance and complaint intake for the programs and regulatory functions it has oversight thereof. However, ch. 20, F.S. indicates that the Department of Financial Services will be responsible for consumer assistance for "offices" (Office of Insurance Regulation and Office of Financial Regulation) of the Financial Services Commission.

Division of Risk Management: The State of Florida through the Division of Risk Management provides insurance coverage to 48 state agencies and state universities. Specifically, the Division of Risk Management provides insurance coverage in the areas of workers' compensation, general liability, federal civil rights, automobile liability, and property insurance. The Division is funded with premiums paid by each agency and state university based on their respective loss history. The premiums are deposited in to the State Risk Management Trust Fund.

The Division's mission is three-fold: 1) provide agencies and state universities with cost-effective insurance coverage either through the state's self insurance program or purchasing commercial insurance; 2) to administer claims; and 3) to provide loss prevention program assistance and training.

Within the organizational structure of the Division of Risk Management is the Bureau of Loss Prevention, which provides professional safety training, quality evaluation tools along with other loss prevention and cost control programs for the agencies and state universities. Section 216.251(2)(b)(2), F.S., authorizes agencies and state universities to maintain return-to-work programs. However, the statute does not require them to do so.

Currently, state agency participants in the state's self insurance program have no responsibility to engage in loss prevention activities, including return-to-work programs. Additionally, there is no accountability or evaluation of such programs. While lost time workers' compensation claims account for only 10% of the state's self insurance program, those claims account for 80% of workers' compensation claims cost. Current law provides agencies no incentive to reduce claims cost or return injured workers to work.[1] The primary goal of a return-to-work program is to enable injured workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

In recent years, the Division has seen a rapid increase in the cost of workers' compensation. In Fiscal Year 2004-2005, the workers' compensation expenditures to the State Risk Management Trust Fund were $91.3 million.[2] In Fiscal Year 2009-2010, the workers' compensation expenditures totaled $131.6 million – a 44% increase in five years.[3]

The DFS reports that other states such as Texas and Georgia have actively required all state agencies to maintain return-to-work programs. In fact, Georgia mandates that an agency loses the position of an

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[1] Department of Financial Services - Division of Risk Management Bill Analysis and Fiscal Impact Statement dated March 8, 2010 on file with the Government Operations Appropriation Subcommittee.

[2] Department of Financial Services Risk Management – Non-operating Budget FY 2005-2009, on file with the Government Operations Appropriations Subcommittee.

[3] Risk Management Trust Fund Revenue Estimating Conference data, dated March 1, 2011.

injured worker, if they do not provide alternative or modified duties for injured workers to return to work.[4]

Workers' Compensation Administration Trust Fund: The Workers' Compensation Administration Trust Fund (WCATF) within Department of Financial Services has the purpose of providing for the payment of expenses in respect to the administration of the workers' compensation program in the state.[5] Additionally, each fiscal year, funds are appropriated from the Workers' Compensation Administration Trust Fund to be transferred to other agencies to support related programs. Specifically, funds from the WCATF are transferred annually to the following agencies: Department of Education, Agency for Health Care Administration, Department of Business and Professional Regulation, Department of Management Services/Division of Administrative Hearings, First District Court of Appeal, and Justice Administration Commission (for use by the State Attorney in the 11th Judicial Circuit for the prosecution of workers' compensation fraud).

The major revenue source (other than fines imposed by the Division of Workers' Compensation) for the WCATF are assessments on workers' compensation insurance premiums as provided for in s. 440.51(1), F.S. Each year, by July 1st the department is required to notify insurance carriers and self-insurers of the assessment rate necessary for the enforcement of ch. 440, F.S. The assessment rate is effective the following January 1st.

Presently, at the conclusion of each fiscal year there is no statutory requirement or mechanism by which the agencies to which WCATF cash has been transferred and which remains unobligated and unspent must be returned to the WCATF. At the conclusion of Fiscal Year 2008-2009, an estimated $2.5 million in WCATF cash remained unobligated and unspent in the agencies to which it had been transferred.

In recent years, the cash balance of the WCATF has declined considerably, with expenditures exceeding revenues. In Fiscal Year 2008-2009, expenditures exceeded revenues by $41.1 million. In Fiscal Year 2009-2010, revenues fell short of expenditures by $35.6 million. The forecast for Fiscal Year 2010-2011, indicates yet another year where expenditures will exceed revenues by $51.1 million.[6] With the decline in revenues and the need to fund the programs that had been appropriated, the Chief Financial Officer on June 26, 2009, ordered an increase in the assessment on worker's compensation insurers and self-insurers premiums from one-quarter of one percent (0.25) to eight-tenths of one percent (0.80%) to insure that sufficient cash would be available to fund the appropriations set by the Legislature in the Fiscal Year 2009-2010 General Appropriations Act.[7] Due to the continuing decline in the trust fund balance, effective January 1, 2011, the assessment rate for the Workers' Compensation Administration Trust Fund was increased to ninety-eight hundreds of one percent (.98%) based on an order signed by the Chief Financial Officer June 17, 2010.[8]

Effects of Proposed Changes

Office of Financial Regulation / Consumer Assistance: The bill amends s. 20.121, F.S., to update the statute to reflect that the Department of Financial Services will provide consumer assistance and compliant intake for programs and regulatory functions for which the department has oversight as well as for programs and functions under the Office of Insurance Regulation. The Office of Financial Regulation will continue to handle consumer assistance and compliant intake for programs and functions for which it has oversight responsibilities. The proposed House of Representatives General Appropriations Act for Fiscal Year 2011-2012, reflects appropriations for positions and budget in accordance with the proposed changes to s. 20.121, F.S.

[4] Division of Risk Management Presentation to the House Government Appropriations Subcommittee, dated February 10, 2010.
[5] Section 440.50, F.S.
[6] Department of Financial Services, Updated Schedule I of the Workers' Compensation Administration Trust Fund - submitted January 24, 2011.
[7] Department of Financial Services, Assessment Rate Order for Worker's Compensation Administration Trust Fund, June 26, 2009 (Case No. 105011-09-WC).
[8] Department of Financial Services, Assessment Rate Order for Workers' Compensation Administration Trust Fund, June 17, 2010

Division of Risk Management: The bill amends s. 284.50, F.S., by requiring the Department of Financial Services and all state agencies and state universities with 3,500 or more employees who are provided insurance coverage from the Division to establish and maintain a return-to-work program for injured state workers. Presently, each of the impacted agencies and state universities, with the exception of FIU, has some form of a return-to-work program. However, DFS indicates that FIU will begin implementation of a return-to-work program in April, 2011.[9] The impacted agencies and state universities include: Department of Corrections, University of Florida, Department of Health, Department of Children and Families, Florida State University, Agency for Workforce Innovation, University of South Florida, Department of Transportation, University of Central Florida, State Attorneys, Florida International University, Department of Revenue, Florida Atlantic University, Department of Juvenile Justice, Department of Highway Safety and Motor Vehicles, Department of Environmental Protection, State Court Systems, Agency for Persons with Disabilities, and Department of Agriculture and Consumer Services.

The return-to-work program will have the primary goal of enabling injured state workers to remain at work or return to work to perform job duties within the physical and mental functional limitations and restrictions established by the treating physician.

The bill also provides that the Division will evaluate each agency's return-to-work and loss prevention program at least once every 5 years. The Division's evaluation report on any recommended corrective action of an agency's return-to-work or loss prevention program will be submitted to the agency head, the Chief Financial Officer, and the Director of the Division of Risk Management. The affected agency head must provide a response to the Division within 45 days with a plan to implement corrective action. If the agency disagrees with the Division's final report recommendations or fails to take corrective action, the Division's final report recommendations will be submitted to the chairs of the legislative appropriations committees.

The bill amends s. 284.42, F.S., to clarify that the Division's annual report will be due each year (based on the prior fiscal year) on or before January 1st to the Governor, President of the Senate, and Speaker of the House of Representatives. Additionally, the annual report must include, beginning January 1, 2013, an analysis of return-to-work efforts by agency. The return-to-work analysis must include specific benchmarks to indicate the measurable outcomes and change from year to year by agency of return-to-work efforts.

The bill also amends ss. 284.01 and 284.36, F.S., to include that agency Risk Management premiums will be calculated and charged based on loss prevention results as well as actual losses as they currently are calculated and charged.

The DFS indicates that the benefits of a return-to-work program will have a positive impact by reducing costs and returning injured state workers to the workplace faster and keeping them at work. Further, the DFS estimates that there will be an indirect cost savings to the agencies by having increased productivity from reducing the loss of workers over an extended period of time along with producing lower rehiring and training costs.[10]

The Fiscal Year 2010-2011 General Appropriations Act, included a nonrecurring appropriation of $17.1 million (section 112) to address the projected deficit in the Risk Management Trust Fund for Fiscal Year 2009-2010. In addition, the GAA included a recurring $39.1 million appropriation (Specific Appropriation 2180) to cover the Fiscal Year 2010-2011 estimated short-fall. The projected deficits for the previous and the current fiscal years are primarily attributable to the rising costs of workers' compensation. This bill implements a statewide return-to-work program with the goal of reducing the

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[9] Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 14, 2011, on file with the House Government Operations Appropriations Subcommittee.
[10] Division of Risk Management Presentation to the House Government Operations Appropriations Subcommittee dated Feb.10, 2010.

state's workers' compensation expenditures.[11] The DFS estimates the savings from the implementation of a return-to-work program to be approximately $1.0 million annually.[12]

The Legislature appropriated three positions and $298,478, in the Fiscal Year 2010-2011 General Appropriations Act, to begin implementation of a state return-to-work program. However, without specific authority to require agencies to proactively engage in return-to-work activities the potential cost savings are not likely to be realized. The return-to-work program conforms to the proposed House General Appropriations Act by providing the Risk Management Program with additional authority to implement a statewide return-to-work program in all agencies and universities with 3,500 or more employees with the potential to reduce costs thereby achieve cost savings to the Risk Management Trust Fund.

Workers' Compensation Administration Trust Fund: The bill amends s. 440.50, F.S., to require that funds transferred from the WCATF to the various agencies (that by statute are to be funded from the WCATF) that remain unencumbered as of June 30 or undisbursed as of September 30 each year, shall revert to the Workers' Compensation Administration Trust Fund.

The language in this section of the bill conforms to the House Proposed General Appropriations Act for Fiscal Year 2011-2012, by insuring that a potentially larger trust fund balance will be considered by the Chief Financial Officer when determining the rate of assessment on insurance carriers to support the appropriations made by the Legislature for administration of the workers' compensation laws as provided for in section 440.51(1), F.S.

B. SECTION DIRECTORY:

Section 1 Amends s. 20.121, F.S., to codify the transfer of responsibilities related to consumer complaints for the Office of Financial Regulation from the Department of Financial Services to the Office of Financial Regulation.

Section 2 Amends s. 284.01, F.S., to provide that the Division of Risk Management shall include loss prevention results in premium charges.

Section 3 Amends s. 284.36, F.S., to provide that the Division of Risk Management will include loss prevention results in computing premium charges for all agencies.

Section 4 Amends s. 284.42, F.S., to provide that the annual Risk Management Report is due on or before January 1 of each year. In addition, beginning January 1, 2013, the annual report shall include an analysis of return-to-work efforts by agency.

Section 5 Amends s. 284.50, F.S., to provide that the Department of Financial Services and all agencies employing more than 3,500 employees must have a return-to-work program for employees receiving workers' compensation benefits.

Section 6 Amends s. 440.50, F.S., to provide that funds appropriated from the Workers' Compensation Administration Trust Fund by operating or nonoperating transfer to other agencies that remain unencumbered on June 30 or undisbursed on September 30 shall revert to the Workers' Compensation Administration Trust Fund.

Section 7 Provides an effective date of July 1, 2011.

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[11] Division of Risk Management Presentation to the House Government Operations Appropriations Subcommittee dated Feb. 8, 2011.

[12] Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 6 requires agencies that receive funding from the Workers' Compensation Administration Trust Fund to return the cash, if remaining unobligated and unspent at the end of the fiscal year. With increased cash flow (with the reverted cash being returned) in the WCATF, the Chief Financial Officer may be able to set lower assessment rates on insurance carriers as provided for in s. 440.51(1), F.S. for the administration of the state's workers' compensation provisions contained in ch. 440, F.S.

D. FISCAL COMMENTS:

The bill will likely have a positive fiscal impact on state government and the Department of Financial Services, more specifically:

The bill will likely achieve cost savings in the Risk Management Trust Fund with the implementation of a return-to-work program. In recent years the state has seen a dramatic increase in workers' compensation costs within the state's Risk Management Program. The Legislature appropriated in the Fiscal Year 2010-2011 General Appropriations Act a total of $56.1 million for projected deficits ($17.1 million for Fiscal Year 2009-2010 and $39.1 million for Fiscal Year 2010-2011) in the Risk Management Trust Fund primarily due to the rise in workers' compensation costs. The DFS has estimated that a return-to-work program could potentially save $1.0 million annually.[13]

Section 6 of the bill requires that agencies that receive cash transfers from the Workers' Compensation Administration Trust Fund to fund related workers' compensation activities must return unobligated and unspent cash at the conclusion of each fiscal year. This provision may allow the Chief Financial Officer to take into consider a potentially larger trust fund balance when determining the rate assessment on insurance carriers to support the appropriations made by the Legislature for administration of the workers' compensation laws.

[13] Correspondence with R.J. Castellanos, Director of Division of Risk Management, dated March 15, 2011, on file with the House Government Operations Appropriations Subcommittee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The primary contents of this bill (return-to-work) were included in House Bill 5603, which was passed by the Legislature during the 2010 Session. However, House Bill 5603 was amended during the Budget Conference to include language limiting the amount that may be charged for repackaged drugs provided to workers' compensation claimants. Governor Crist vetoed House Bill 5603. In his veto message the governor stated that while he supported the provisions in the bill, "that would help control the state's risk management and workers' compensation costs," he did not support the drug repacking provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES